Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	MB Docket No. 08-214
TCR Sports Broadcasting Holding, LLP d/b/a Mid-Atlantic Sports Network, Complainant	)	File No. CSR-8001-P
v.	)	
Comcast Corporation, Defendant	)	

OBJECTION OF MADISON SQUARE GARDEN, L.P., TO THIRD PARTY DISCOVERY AND REQUEST FOR RELIEF FROM ORDER

Pursuant to the Chief Administrative Law Judge's Order dated February 25, 2009, in the above-captioned matter compelling Comcast Corporation ("Comcast") to produce certain Affiliate Agreements to TCR Sports Broadcasting Holding, LLP d/b/a Mid-Atlantic Sports Network ("MASN"), Madison Square Garden, L.P. hereby objects to the production of its Affiliate Agreement with Comcast and respectfully requests that its Affiliate Agreement be excepted from discovery.

Madison Square Garden, L.P. distributes the regional sports networks MSG and MSG Plus (collectively referred to herein as "MSG") to cable and satellite television subscribers in New York, New Jersey, Connecticut and Pennsylvania. MSG's professional sports programming currently consists of games of the New York Knicks, New York Rangers, New York Islanders, New Jersey Devils, Buffalo Sabres, New York Red Bulls and New York Liberty. MSG and Comcast are parties to an affiliation agreement pursuant to which Comcast distributes MSG to subscribers served by Comcast

cable systems in New Jersey and Connecticut. The terms of the MSG-Comcast affiliation agreement expressly require the parties to treat the agreement as confidential.

Because the compelled discovery would pose a serious risk of competitive harm to MSG that is neither outweighed by its probative value nor resolved by the protective order that has been entered in this case, MSG's Affiliate Agreement with Comcast should be excepted from discovery.

I. COMPELLED PRODUCTION OF THE MSG AFFILIATION AGREEMENT POSES A SERIOUS RISK OF COMPETITIVE HARM TO MSG

The terms of the MSG Affiliate Agreement that is the subject of MASN's document request are ***extremely*** competitively sensitive. The agreement contains information that is highly proprietary with the expectation (and contractual commitment) that it will be maintained in the strictest confidence.

The Commission has previously recognized the extraordinarily sensitive nature of confidential programming contracts, and has warned that compelled production of programming contract material that lacks probative value "unnecessarily risk[s] the disclosure of sensitive business information." *See e.g., In the Matter of Falcon First Communications, Appeals of Local Rate Orders of Whitfield County, Georgia*, Memorandum Opinion and Order, 14 FCC Rcd 7277, 7290 (1999). The Commission itself has acknowledged its "obligation not to overreach in our discovery requests when confidential third party agreements are at issue." *In the Matter of Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 22633, 22639 ¶ 16 (2002).

II. THE SERIOUS RISK TO MSG IS NOT OUTWEIGHED BY ANY PROBATIVE VALUE OF THE MSG AGREEMENT TO MASN'S DISPUTE WITH COMCAST

MASN and MSG provide different types of professional sports programming to different viewers in different markets. MASN is a relatively new network whose flagship professional sports programming consists of Washington Nationals and Baltimore Orioles baseball games, and whose service territory primarily encompasses Mid-Atlantic viewers in Maryland and Virginia. MSG is an established network whose service territory (noted above) does not overlap in any way with MASN's. Indeed, to MSG's knowledge, no part of MSG's service territory is even adjacent to any market served by MASN.

MASN's only attempted justification for seeking all third party regional sports network ("RSN") agreements is that "it is entitled to learn the facts underlying Comcast's claims that MASN's costs are too high to warrant carriage of MASN across MASN's television territory." Motion at 4. While Comcast's affiliation agreements with other RSNs in MASN's service territory might be relevant to the issue framed by MASN, the terms of MSG's agreement with Comcast will provide little or no probative value regarding MASN's claims.

The fact that the Adelphia merger order imposed certain restrictions upon Comcast and Time Warner that included an arbitration provision, and that the Rules of Arbitration in that order allows the arbitrator to consider "current or previous contracts between MVPDs and RSNs in which Comcast or Time Warner do not have an interest," *Adelphia Order* at Appendix B § 3, in no way suggests that *this* agreement is so relevant to MASN's dispute that it should be compelled over MSG's objection in *this* case. The

Adelphia Order does not confer upon the arbitrator plenary authority to compel production of third party agreements that contain little or no probative value with respect to resolution of the key issues in dispute in a program carriage proceeding over the objection of those third parties, and therefore that order is not at all relevant to the current situation.

III. THE PROTECTIVE ORDER IN THIS CASE DOES NOT RESOLVE MSG'S SERIOUS CONFIDENTIALITY CONCERNS

The Joint Protective Order entered in this case on February 19, 2009, was drafted to protect only the interests of the parties in the case. While the Joint Protective Order pays lip service to third parties' confidential information, its very structure belies the fact that it was not intended to protect, and does not protect, the interests of MASN's programming competitors (such as MSG).

Most importantly, the Joint Protective Order allows MASN's in-house counsel and experts that frequently consult for entities competitive with or adverse to MSG to access the terms of MSG's Affiliate Agreement. Even if MASN's Authorized Representative under the Joint Protective Order is an in-house litigation attorney who claims no role in affiliation negotiations, TCR Sports Broadcasting Holding, LLP is a very small organization that simply cannot have the ability to construct meaningful information screens as would a large corporate law department.

Once MSG's contract terms and negotiating strategy are known to a single employee of MASN, the genie will be out of the bottle, and the Commission will have no way to police the use of this information within the walls of MASN. The Joint Protective Order implicitly recognizes the practical impossibility of a human being pretending not to know such information in §8(e), since it prohibits outside consultants or experts involved

in the case from working for other regional sports networks that are in negotiations with Comcast for the next year. This safeguard, however, does not protect the interests of non-party programmers required to produce agreements, since MASN's experts are free to work for video programming distributors that might seek carriage of such networks. Nonetheless, there is even less reason to believe that a MASN in-house lawyer will remember to protect MSG's confidentiality the next time he or she is privy to a discussion about what terms should appear in MASN's next agreement.

Even if the Joint Protective Order protected the interests of third parties to the same degree that it protects the interests of MASN and Comcast, it is not uncommon for confidential information covered by a Commission protective order to be disclosed nonetheless. *See, e.g., In re Applications of America Online, Inc., and Time Warner, Inc. for Transfers of Control*, Order, 15 FCC Rcd 19668 (2000) (describing breach of protective order by Walt Disney Co.); *see also, e.g., EchoStar Satellite Corp. v. Young Broadcasting, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15070, ¶ 7 (2001) (describing disclosure of confidential information). And punishment of a breaching party—even assuming that a breach could be discovered—could never cure the irreparable damage that disclosure of MSG's confidential contract terms would cause.

The only way to protect MSG's interest in confidentiality—an interest that is not outweighed by any probative value of its agreement to this case—is to except its

Affiliation Agreement from discovery.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Robert Kidwell, certify that copies of the foregoing were served via electronic mail as follows:

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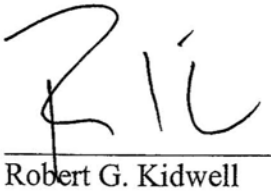

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